

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

THOMAS G. McGRAW and YVONNE  
McGRAW,

## Plaintiffs,

V.

UNITED STATES OF AMERICA, *et al.*,

## Defendants.

No. C08-92RSL

**ORDER GRANTING  
NORIDIAN'S MOTION  
TO DISMISS**

This matter comes before the Court on "Defendant Noridian Mutual Insurance

Company's Motion To Dismiss." Dkt. #20. Having reviewed the complaint and the memoranda submitted by the parties, the Court finds as follows:

(1) Defendant does not challenge this Court's personal jurisdiction over defendant or its power to hear and decide the issues raised by plaintiffs. Rather, defendant argues that the claims asserted against it must fail as a matter of law because defendant is immune from suit under 26 U.S.C. § 6332(e). A motion to dismiss on this ground may be brought before an answer is filed pursuant to Fed. R. Civ. P. 12(b).

(2) Plaintiffs provide no case law or other legal support for their contention that the immunity granted by 26 U.S.C. § 6332(e) contains a good faith requirement. Noridian's subjective belief regarding the validity of the levy against plaintiffs' property is irrelevant. The

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1 governing statute compels compliance with an Internal Revenue Service (“IRS”) levy and does  
 2 not permit third-parties to delay compliance until they are personally satisfied that a debt is  
 3 actually due and owing. See 26 U.S.C. § 6332(a) and (d).

4       (3) As discussed in the Courts’s prior order granting Regence Blueshield’s motion to  
 5 dismiss, immunity is not abrogated if the disbursal of funds constitutes a breach of contract. See  
 6 Dkt. #26 (May 5, 2008). Section 6332(e) provides that any person who surrenders property to  
 7 the IRS pursuant to a levy “shall be discharged from any obligation or liability to the delinquent  
 8 taxpayer and any other person with respect to such property or rights to property arising from  
 9 such surrender or payment.” The statute cuts off “*any* obligation or liability to the delinquent  
 10 taxpayer” (emphasis added). There is no exception for breach of contract or breach of fiduciary  
 11 duty claims. Indeed, such exceptions would likely swallow the rule. Any claim based on the  
 12 surrender of property in response to a levy is barred, and neither the statute nor the case law  
 13 supports plaintiff’s attempt to assert a “separate and collateral” breach of contract claim in this  
 14 case. See *Farr v. United States*, 990 F.2d 451, 456 (9th Cir. 1993); *Melton v. Teachers Ins. &*

15 Annuity Ass’n of Am., 114 F.3d 557, 560-61 (5th Cir. 1997).

16       (4) Plaintiffs’ waiver argument, if accepted, would effectively abrogate the immunity  
 17 provided by 26 U.S.C. § 6332(e) because every surrender in response to a notice of levy could  
 18 be described as conduct “instigated and directed by federal officers.” See Response at 7.  
 19 Whether Noridian was acting as a “federal actor” has no bearing on this case. Defendant’s  
 20 alleged conduct falls squarely within the immunity provided by § 6332(e), and there is no  
 21 evidence that it intentionally relinquished the statute’s protections.

22       (5) Plaintiffs argue that, as a general matter, a tax recovery scheme that immunizes  
 23 certain participants from suit is unjust and violates their right to seek redress in the courts. The  
 24 federal government’s power to collect taxes on income is enshrined in the United States  
 25 Constitution, and Congress has provided a statutory scheme through which that power can be  
 26 exercised. In order to facilitate the collection of delinquent taxes, Congress gave the IRS the

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1 power to levy against a taxpayer's property wherever it may lie. In order to protect third parties  
2 who are in possession of a delinquent taxpayer's property from "the Scylla of IRS fury and the  
3 Charybdis of taxpayer vengeance," Congress chose to immunize third-parties who comply with  
4 a notice of levy from all suits arising out of the surrender of the property to the government.  
5 Farr, 990 F.2d at 456. Plaintiffs have other avenues through which to challenge the  
6 government's tax calculations and are statutorily barred from proceeding with this suit against  
7 Noridian.

8 (6) Plaintiffs are also statutorily barred from seeking an injunction that would prevent  
9 Noridian from complying with a notice of levy against plaintiffs' property. Pursuant to 26  
10 U.S.C. § 6332(a), defendant has a statutory obligation to surrender levied property to the IRS.  
11 Furthermore, the Anti-Injunction Act, 26 U.S.C. § 7421, prevents a taxpayer from "bringing suit  
12 for the purpose of restraining the assessment or collection of any tax." The Supreme Court has  
13 established a narrow exception that permits a court to issue an injunction if (1) it is "clear that  
14 under no circumstances could the government ultimately prevail"; and (2) the taxpayer would  
15 otherwise suffer irreparable injury. See Enochs v. Williams Packing & Navigation Co., 370  
16 U.S. 1, 7 (1962). Plaintiffs bear the burden of proving both elements of the exception, and they  
17 have not done so here. See Comm'r v. Shapiro, 424 U.S. 614, 627 (1976). The IRS has  
18 produced evidence to support its underlying claim against plaintiffs' property. See Dkt. #22  
19 (Halle Decl.). The affidavit of IRS official M. Henry Halle refutes plaintiffs' argument that the  
20 government's claims are meritless. See id.; see also Williams Packing & Navigation, Co., 370  
21 U.S. at 8. Because plaintiffs' claims do not fall within the Williams Packing exception,  
22 plaintiffs may not ask the Court to enjoin Noridian from further compliance with a notice of  
23 levy.

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3 For all of the foregoing reasons, defendant Noridian's motion to dismiss (Dkt.  
4 #20) is GRANTED.  
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7 Dated this 9th day of June, 2008.  
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10 Robert S. Lasnik  
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13 United States District Judge  
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